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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,831	12/28/2000	Ernest H. Roberts	RTS 2 0017	8674

23717 7590 12/30/2002

LAW OFFICES OF BRIAN S STEINBERGER  
101 BREVARD AVENUE  
COCOA, FL 32922

EXAMINER

VARNER, STEVE M

ART UNIT PAPER NUMBER

3635

DATE MAILED: 12/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/750,831

Applicant(s)

ROBERTS, ERNEST H.

Examiner

Steve M Varner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 December 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 8,12-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s)     is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-11, 21-23 is/are rejected.
- 7) ☐ Claim(s)     is/are objected to.
- 8) ☐ Claim(s)     are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on     is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on     is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No.    .
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s)    .
- 4) ☐ Interview Summary (PTO-413) Paper No(s).    .
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:    .

### **DETAILED ACTION**

In view of the papers filed 1/18/02, it has been found that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and accordingly, this application has been corrected in compliance with 37 CFR 1.48(a). The inventorship of this application has been changed by adding Philip G. Koehler.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of the file jacket and PTO PALM data to reflect the inventorship as corrected.

Claims 8, 12-20, are canceled.

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claim 1 recites a sheet and an arthropod deterring component. It is not clear from the disclosure what constitutes the component, as this appears to be something other than the sheet.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claim 1-7, 9-11, 21-23, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1, 6, 7, 21, 22, "arthropod deterring component," is indefinite.

Regarding claims 1, 21, 22, the passageway is not sized; therefore, the sheet cannot be sized relative to it.

Claims 2-5, 9-11, 23, depend from claim 1 and are therefore rejected under 35 USC 112.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 6, 7, 9-11, are rejected under 35 U.S.C. 102(b) as being anticipated by Sharples.

Regarding claim 1, Sharples shows a sheet (48) configured to circumscribe a passageway along which arthropods crawl, a dimension of the sheet sized relative to the passageway, wherein the sheet (48) is configured to circumscribe a passageway defined by a utility wall plate (30) abutting a wall and an arthropod deterring component (80) associated with the sheet for deterring the crawling arthropods and impeding their route of travel along the passageway.

Regarding claim 6, Sharples shows an arthropod-detering component (screw hole at top and bottom of 48) molded directly therein.

Regarding claim 7, Sharples shows the arthropod-detering component (screw hole at top and bottom of 48) applied therein.

Regarding claim 9, Sharples shows the sheet configured to circumscribe a passageway defined by an opening through the utility wall plate intended for access of a utility receptacle there through. (Fig. 3)

Regarding claim 10, Sharples shows the sheet configured to circumscribe a passageway defined by a space between the utility wall plate and the wall to which it abuts. (Fig. 3)

Regarding claim 11, Sharples shows the opposing ends of the sheet are substantially equal in length, and an opening defined through the sheet is intended for receipt of the utility receptacle there through.

Claims 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Manak.

Regarding claims 21, 22, Manak teaches a barrier implement (1) with a sheet (1) circumscribing a passageway along which arthropods crawl. (Fig. 1) The sheet has a dimension sized relative to the passageway. There is an arthropod deterring component (2). (Fig. 1) Manak shows the sheet configured to circumscribe a passageway defined by an exterior surface of a narrow or elongated structure. (Fig. 1) Manak shows a shield or flange for the barrier implement (2). (Fig. 1)

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Regarding claim 23, Manak teaches the sheet configured in an O-shape (1) to fit behind a flange (2). (Fig. 1)

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Carman reveals a tree trunk barrier for pest control. Ritter shows a rodent exclusion device.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sharples.

Sharples shows the basic claimed structure. Sharples does not show the sheet molded, extruded, pliable, or stiff. It would have been an obvious design choice to make the sheet molded, extruded, pliable, or stiff since molding and extrusion are normal ways in which pliable and stiff sheets may be made.

***Conclusion***

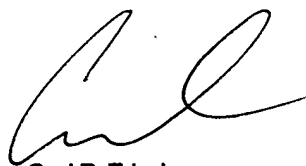
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve M Varner whose telephone number is 703 308-1894. The examiner can normally be reached on M-F 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D Friedman can be reached on 703 308-08390839. The fax phone numbers for the organization where this application or proceeding is assigned are 703 305-7687 for regular communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1113.

SV

December 23, 2002

A handwritten signature, likely of the examiner, consisting of stylized initials.A handwritten signature of Carl D. Friedman, featuring a large, flowing 'C' and 'F'.

Carl D. Friedman  
Supervisory Patent Examiner  
Group 3600